

FITZGERALD KNAIER LLP

Kenneth M. Fitzgerald (State Bar No. 142505)
 kfitzgerald@fitzgeraldknaier.com
 David Beckwith (State Bar No. 125130)
 dbeckwith@fitzgeraldknaier.com
 Keith M. Cochran (State Bar No. 254346)
 kcochran@fitzgeraldknaier.com
 402 West Broadway, Suite 1400
 San Diego, California, 92101
 +1 (619) 241-4810
 +1 (619) 955-5318 facsimile

WARREN LEX LLP

Matthew S. Warren (State Bar No. 230565)
 Patrick M. Shields (State Bar No. 204739)
 Erika H. Warren (State Bar No. 295570)
 16-463@cases.warrenlex.com
 2261 Market Street, No. 606
 San Francisco, California, 94114
 +1 (415) 895-2940
 +1 (415) 895-2964 facsimile

Attorneys for Plaintiff and Counter Defendant ViaSat, Inc.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

VIASAT, INC.	) Case No. 3:16-463-BEN-JMA
a Delaware corporation,)
Plaintiff and Counter-Defendant,	) Motion to File Under Seal Documents in
	) Support of Motion for Summary
v.	) Judgment on Patent Misappropriation
)
ACACIA COMMUNICATIONS, INC.	) Date: March 5, 2018
a Delaware corporation,	) Time: 10:30 a.m. PST
Defendant and Counter-Claimant.	) Place: Courtroom 5A
)
	) Hon. Dist. Judge Roger T. Benitez
	) Hon. Magistrate Judge Jan M. Adler
)
	) Case Initiated: January 21, 2016

Under Federal Rule of Civil Procedure 26(c), Local Rule 79.2(c), ECF Administrative Policies and Procedures 2(j), and Paragraph 1 of the Stipulated Protective Order (Dkt. No. 29), as amended (Dkt. No. 47), Plaintiff and Counter-Defendant ViaSat, Inc. (“ViaSat”) respectfully requests that the Court file under seal (a) portions of the Memorandum of Points and Authorities in Support of ViaSat’s Motion for Summary Judgment on Acacia’s Counterclaim for Patent Misappropriation, and (b) Exhibits 4 and 5 to the Declaration of Erika H. Warren in support of ViaSat’s Motion for Summary Judgment on Acacia’s Counterclaim for Patent Misappropriation.

ARGUMENT

Certain limited portions of the Memorandum of Points and Authorities in Support of ViaSat’s Motion for Summary Judgment on Acacia’s Counterclaim for Patent Misappropriation and certain of the exhibits attached to the Declaration of Erika H. Warren in support of that Motion contain confidential information that one or both of the parties have designated as Confidential or Highly Confidential – Attorneys’ Eyes Only under the Stipulated Protective Order (Dkt. No. 29), disclosure of which would harm the competitive standing of the parties and could be used to the parties’ competitive disadvantage outside of this case.

Specifically, ViaSat seeks to seal the following documents:

(a) Exhibit 4, which is a copy of October 27, 2017 Expert Report of Dr. Paul Prucnal, served by Acacia in this action, contains information that ViaSat designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 4 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products, as well as technical information that ViaSat identified as confidential.

(b) Exhibit 5, which is a copy of excerpts of the deposition of Dr. Paul Prucnal, dated December 4, 2017, contains information that ViaSat designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 5 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products, as well as technical information that ViaSat identified as confidential.

1 (c) The Memorandum of Points and Authorities in Support of ViaSat’s Motion
 2 for Summary Judgment on Acacia’s Counterclaim for Patent Misappropriation contains
 3 excerpts and discussion regarding the above exhibits, including information that ViaSat
 4 and Acacia designated as Highly Confidential – Attorneys’ Eyes Only. The
 5 Memorandum contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused
 6 products, Acacia’s alleged trade secrets and ViaSat’s accused products, as well as
 7 technical information that ViaSat and Acacia identified as confidential.

8 This request is narrowly tailored to protect only the information that is confidential,
 9 and ViaSat has filed concurrently a public version of the Memorandum of Points and
 10 Authorities in Support of ViaSat’s Motion for Summary Judgment on Acacia’s
 11 Counterclaim for Patent Misappropriation.

12 While the public generally enjoys the right of access to court records, the public’s
 13 right to access to court records “is not absolute,” and documents are properly filed under
 14 seal where disclosure would harm a party by forcing it to disclose trade secrets or other
 15 valuable confidential proprietary business information. *See, e.g. Nixon v. Warner*
 16 *Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (“It is uncontested, however, that the right to
 17 inspect and copy judicial records is not absolute. Every court has supervisory power over
 18 its own records and files, and access has been denied where court files might have
 19 become a vehicle for improper purposes.”); *Algarin v. Maybelline, LLC*, No. 12-3000,
 20 2014 WL690410, at *3 (S.D. Cal. Feb. 21, 2014) (“Where a party shows that its
 21 documents contain sources of business information that might harm its competitive
 22 standing, the need for public access to the records is lessened.”). Courts must ensure that
 23 their records are not used as “sources of business information that might harm a litigant’s
 24 competitive standing.” *Nixon*, 435 U.S. at 598; *see also Bauer Bros. LLC v. Nike, Inc.*,
 25 No. 09500, 2012 WL1899838, at *3–*4 (S.D. Cal. May 24, 2012) (granting motion to
 26 seal Nike’s non-public financial data).

27 Where the materials to be sealed include dispositive pleadings and attachments, the
 28 Ninth Circuit applies a “compelling reasons” test to rebut the presumption of public

1 access. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The
2 Court finds “‘compelling reasons’ sufficient to outweigh the public's interest in
3 disclosure and justify sealing court records exist when such ‘court files might have
4 become a vehicle for improper purposes,’ such as the use of records to gratify private
5 spite, promote public scandal, circulate libelous statements, *or release trade secrets.*” *Id.*
6 at 1179 (emphasis added), *citing Valley Broadcasting Co. v. U.S. Dist. Ct.*, 798 F.2d
7 1289, 1295 (9th Cir.1986).

8 ViaSat has compelling reasons to file under seal because the information ViaSat
9 seeks to seal has been identified as confidential by Acacia and ViaSat, including Acacia’s
10 asserted trade secrets. Publicly filing the information would prejudice Acacia and ViaSat
11 by revealing technical and financial information that could be used for competitive
12 advantage outside of this case. Therefore, there are compelling reasons to seal this
13 information.

14 Exhibits 4 and 5 have been lodged under seal concurrently. Attached is a redacted
15 copy of ViaSat’s Memorandum of Points and Authorities in Support of its Motion for
16 Summary Judgment on Acacia’s Counterclaim for Patent Misappropriation, the
17 Declaration of Erika H. Warren in support of ViaSat’s Motion for Summary Judgment on
18 Acacia’s Counterclaim for Patent Misappropriation, and Exhibits 1 through 3.

19 Therefore, under ViaSat’s obligations under the stipulated protective order, ViaSat
20 respectfully requests that the Court file under seal (a) portions of ViaSat’s Memorandum
21 of Points and Authorities in Support of its Motion for Summary Judgment on Acacia’s
22 Counterclaim for Patent Misappropriation, and (b) Exhibits 4 and 5 to the Declaration of
23 Erika H. Warren in Support of ViaSat’s Motion for Summary Judgment on Acacia’s
24 Counterclaim for Patent Misappropriation.

CONCLUSION

For the foregoing reasons, ViaSat respectfully requests that the Court seal the portions of Acacia's Memorandum of Points and Authorities and the supporting documents identified above. A Proposed Order will be emailed to efile_benitez@cassd.uscourts.gov and efile_adler@casd.uscourts.gov.

Dated: February 2, 2018

Respectfully Submitted,

s/ Kenneth M. Fitzgerald

Kenneth M. Fitzgerald

David Beckwith

Keith M. Cochran

FITZGERALD KNAIER LLP

402 West Broadway, Suite 1400

San Diego, California, 92101

Matthew S. Warren

Patrick M. Shields

Erika H. Warren

WARREN LEX LLP

2261 Market Street, No. 606

San Francisco, California, 94114

Attorneys for Plaintiff and

Counter-Defendant ViaSat, Inc.

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for Acacia Communications, Inc., per the agreement of counsel.

Dated: February 2, 2018

s/ *Kenneth M. Fitzgerald*

Kenneth M. Fitzgerald, Esq.